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“Motives of Petitioners in Contested Conservatorships and Guardianships”

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In discussing the motives that drive these involuntary conservatorship and guardianship proceedings, I am speaking for the hundreds of thousands of men and women whose retirement years have been destroyed by them. Our states designate these proceedings as “non-adversarial” in nature, brought out of the goodness of a petitioner’s heart to help an elderly person in distress. It is a powerful term, and it is almost always incorrect. These are court battles, fought over money, power and control. Sadly, the elderly lose almost 94% of the time, often in proceedings that take only four minutes. Their cases are rarely appealed.

Let’s begin with a brief discussion of the motives guiding family members. The majority of these petitions are filed by adult children who are seeking some form of control over the personal and/or financial affairs of their aging relatives. They are sibling battles rooted in issues of inheritance and control, often described as “thinly veiled pre-death will contests.” Anyone who reaches 62 with coveted assets is at risk. As one forensic psychiatrist noted about these so-called protective proceedings, “For every \$100,000 in a given estate, a lawyer shows up; for every \$25,000, a family member shows up; and if

there isn't any money, then nobody shows up" (quoted in Harold T. Nedd's "Fighting over the care of aging parents," **USA Today**, July 30, 1998).

I have time to present only one case, although five more are contained in the Appendix you have before you. I have chosen a typically bizarre family battle. Motives? Follow the money. After the death of her husband, Delphine Wagner of Nebraska decided to lease some of her land to a professional alfalfa company rather than continue to let her son and son-in-law farm the land. In so doing, she generated a 160% increase in her income from the leases. Four of her six children filed conservatorship petitions against her and testified in court that she could no longer properly manage her affairs. Their proof? Because she had generated a 160% increase in income, Mrs. Wagner would have to pay more in taxes; and what person in their right mind would want to pay more taxes to Uncle Sam? The Court agreed with the petitioners and appointed a conservator over Delphine. Although already 79, Delphine had the energy and the money to battle through two more courts—year after year after year--and her freedoms were finally restored.

Over 25% of the cases I describe in *THE RETIREMENT NIGHTMARE* involve proceedings that are initiated by social workers and members of the social welfare community. What motives drive these individuals and agencies to file petitions? A desire to control the increasingly independent elders and their money, and a need to expand the numbers of persons "helped" by the agency in order to increase agency funding. [See Cases #1 and #2 in Appendix]

What motives drive members of the court? Judges and their favored professional conservators and guardians, expert witnesses and court investigators have unspoken agendas: money, power and control. When an elderly individual is brought into court and forced to prove his or her competence, we soon see that the system does not work. We have a system rife with court-sanctioned abuse of the elderly. Why? Judges override protections that have been put in place in the codes. It happens every day. Judges disregard durable powers of attorney—the single most important document each of us can create to determine our care should we become incapacitated. Judges ignore our lists of pre-selected surrogate decision-makers. The current system does not work. This reality is most apparent when a wealthy individual falls victim to these involuntary proceedings and his or her wealth becomes a ripe plum to be shared by the Judge's favorites. The cost of my mother's 18-month conservatorship battle in Los Angeles Superior Court exceeded one million dollars because no court appointee would let the matter end until my mother agreed to settle out of court and pay every bill of every person involved—on both sides of the case. Money is a lure. Once the hook is set in a wealthy potential ward, courts have a feeding frenzy. All of Riverside County in Southern California was held hostage by the collusion between a single probate judge and his favorite professional conservator. [See Cases #3 and #4 in Appendix]

Third parties, such as nursing homes, hospitals, and continuing care facilities often require conservatorships or guardianships over their patients to insure payment of bills or to evict the elderly from one setting and place them in another. In many cases, nursing homes will refuse admittance to adults who are not represented by court-appointed

surrogate decision-makers. This practice, while not legal, is often the price of admission in the face of an increasing demand for the limited space available in private convalescent centers. [See Case #5 in Appendix]

Families are destroyed by these proceedings. The hundreds of thousands of unfortunate men and women who have been placed in the velvet handcuffs of contested conservatorships and guardianships in America are without hope. Their conservatorships and guardianships end only when they die—or when the system spends their estates down to \$10,000 or less and spits the wards out into a harsh world of poverty.

Sibling battles rooted in issues of inheritance, control and care; social welfare petitions driven by hidden agendas of power and control; nursing homes that quietly require financial guarantees; and court actions that create the very abuse they are tasked to address—our country's involuntary conservatorship and guardianship system is out of control. It is no longer a morally permissible option.

I now pose a final question. Is the present hearing merely a ten-year revisiting of an ongoing problem, last discussed by the Senate in 1991, '92 and '93? Or are we here to see—for once and for all—that this court-sanctioned abuse of the elderly finally comes to an end?

Thank you.

APPENDIX: FIVE CONTESTED CONSERVATORSHIP/GUARDIANSHIP CASES

CASE #1. Glen Hawkins ran into trouble when he angered a social worker at his Leisure World condo in Orange County, California. The social worker had transferred Mr. Hawkins' wife of 63 years into a nursing home against both of their wishes. Thinking her husband had betrayed her, his wife stopped eating and soon died. When pressed by the social worker to discuss his personal and financial affairs with her, Mr. Hawkins refused. He learned of the consequences of this refusal when, after bicycling two miles to his bank to speak with his investment counselor, he was told that he no longer had control of his \$380,000 portfolio. He had been placed under the control of a court-appointed professional conservator, found in absentia to be "too feeble and addled to manage his financial and personal affairs." Without legal notice to him or to his relatives and without a chance to appear in court, all as required by law, Mr. Hawkins had become a ward of the Court. The social worker had gone to a Long Beach firm of caretakers who filed the conservatorship petitions against Mr. Hawkins in Los Angeles County. Why Los Angeles rather than Orange County, the county in which Mr. Hawkins lived? Because Los Angeles County judges permit professional conservators to charge \$75 an hour for their services rather than the \$35 an hour limit imposed by judges in Orange County.

*S. Emmons, "Conservators' Reach Can Be a Surprise," **Los Angeles Times**, November 23, 1997, pp. A.3, A29.*

NOTE: MARY CONNORS WILL ATTEND THE HEARING ON FEBRUARY 11.

CASE #2. Mary Connors moved with her aging mother from Pennsylvania to California. She took excellent care of her mother, and enrolled her in Alzheimer's day care centers when she was not able to watch her. It is important to note that Mary, who holds a durable power of attorney for her mother, also maintains the payments on her mother's Long-Term Care insurance. On one memorable day not too long ago when Mary went to pick her mother up from the Alzheimer's day care center, she learned that her mother was gone. A cousin in Pennsylvania had forged a second durable power of attorney and spirited Mrs. Connors back to Pennsylvania. Mary followed this trail of broken dreams and tried to regain control. Although agreeing that the second durable power was fraudulent, Pennsylvania's Area Agency on Aging and the State Department of Aging told Mary that they could provide better care of her mother than she could—thanks in part to the convenient Long-Term Care policy Mary continued to pay for. Mary asked, “Where is the \$15,800 that is missing from my mother's bank account?” “It is no longer any of your business,” she was told. “Can I see my mom?” “No, your visits are not in her best interest.” When Mary was finally permitted to visit her mother, she learned that her mother had been told Mary had betrayed her and was selling her house. Indeed, Mary's mother's house in Pennsylvania *is* being sold—sold by the State to feed the system. They are also selling the property Mary bought in California because she had added her mother's name to the title. This case is a very typical (and ongoing) Retirement Nightmare. Mary is giving up hope.

Personal communication with Mary Connors—ONGOING CASE.

CASE #3. In Riverside County, California, the entire system of probate conservatorships was held hostage by its single judge, William H. Sullivan, and his favorite professional conservator, Bonnie Cambalik. Eighty-eight-year-old Lucille Olsen was one of the many victims of this abusive court system. Lucille Olsen had checked herself into a hospital following complications from a fall. Bonnie Cambalik found out about the elderly woman and filed conservatorship papers over her with no notice to Lucille's family as required by law. Cambalik subsequently confined Lucille Olsen to a nursing home, confiscated her mail, refused her a telephone or stationery, and made plans to sell her home. Lucille Olsen was a prisoner at her own expense. She died before her niece forced an investigation. Nothing changed in Riverside County until two investigators and one attorney from San Francisco's Elder Angels began their pro bono probe of the county-wide corruption. Only when attorney Barbara Jagiello found records proving that Judge Sullivan had purchased one of his conservatee's homes from the conservatorship estate at below market value did anything shift. Judge Sullivan was permitted to retire. Professional conservator Barbara Cambalik and her attorney are now in prison.

*Entire copy of the January 2000 cover article from **California Lawyer** featuring this case will be included in materials submitted to the Senate Special Committee on Aging.*

NOTE: ROBIN ADAIR WARJONE WILL ATTEND THE HEARING ON FEBRUARY 11.

CASE #4. Robin Adair Warjone is a college friend of mine whose life was turned upside down by an unwanted "protective proceeding" initiated by all three of her adult children.

Robin was only 56 at the time, living quite nicely on her \$10,000 alimony check every month. Her children wanted the state to step in and control their mother's money. At the request of the children's attorney, the Court appointed a guardian ad litem to represent the proposed ward. Robin hired a major legal firm to represent her best interests, leaving the guardian ad litem with little to do. Unfortunately, Robin had to fight the maneuverings of the court-appointed guardian ad litem for almost an entire year until her children finally withdrew their petitions. The unwanted and unnecessary guardianship never went beyond the initial appointment of the guardian ad litem and into the court, yet Robin's entire retirement nest egg of \$300,000 was consumed by her struggle for freedom.

Personal communication with Robin Adair Warjone—CASE SEALED.

CASE #5. Florence Peters' husband secured a guardianship over his wife in order to place her in a nursing home to convalesce. Florence recovered, and managed to reverse her unwanted guardianship. Unfortunately, she died before being released from the nursing home. Neither her husband nor her guardian attended her funeral. They were honeymooning together in upstate New York.

Described in J. E. Rein, "Preserving Dignity and Self-Determination of the Elderly in the Face of Competing Interests and Grim Alternatives: A Proposal for Statutory Refocus and Reform," **George Washington Law Review** 60 (1992): 1871 (footnote).